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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, GERALD ARMSTRONG, DOES 1 through 10, inclusive, Defendants. MARY SUE HUBBARD, Intervenor.	NO. C420153 TRIAL BRIEF OF DEFENDANT, GERALD ARMSTRONG

I

INTRODUCTION

This action arises from the alleged conversion by Defendant, Gerald Armstrong, hereinafter, "Defendant Armstrong"), of several thousand pages of documents and other materials from the Archives of L. Ron Hubbard, founder of Dianetics and Scientology (hereinafter "Hubbard"). Hubbard,

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however, is not a named party, and has not made himself available for discovery in this action.[1]

On August 2, 1982, Plaintiff Church of Scientology of California (hereinafter "Plaintiff") filed a complaint against Defendant Armstrong for conversion, breach of fiduciary duty, impression of constructive trust, and declaratory and injunctive relief.

On August 3, 1982, following service of the summons and complaint on Defendant Armstrong, Plaintiff sought a temporary restraining order which was denied.

On August 24, 1982, Plaintiff requested reconsideration of its application for a temporary restraining order. On reconsideration, the Court (Judge John L. Cole) issued an order that all documents and materials be deposited under seal with the Clerk of the Superior Court. Thereafter, five boxes of documents and materials were delivered to the Clerk and have been stored in the Court Accounting Division vault until the present time.

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[1]Defendant Armstrong twice noticed the deposition of Hubbard during the pendency of this action pursuant to C.C.P. 2019 (a)(4) which allows the taking of a deposition without service of subpoena on a person for whose immediate benefit an action is prosecuted. Hubbard did not appear at either deposition on the grounds that neither that Plaintiff, Intervenor, nor their attorneys know his whereabouts since he is allegedly living in seclusion. A Motion Compelling his deposition based upon C.C.P. 2019 (a)(4) was denied. Thus, Defendant Armstrong has had no opportunity to depose Hubbard.

On September 24, 1982, Plaintiff's Motion for Preliminary Injunction was heard. By order of October 4, 1982, Judge John L. Cole granted the preliminary injunction but would not deliver the documents and materials to Plaintiff. Defendant will demonstrate at trial as set forth below that the preliminary injunction was obtained based on a false declaration.

The documents and materials were to be retained by the Clerk with inspection privileges given to parties and their attorneys for use in this litigation. Judge Cole further ordered that third parties could obtain discovery of the materials upon a showing by a court of competent jurisdiction that the documents and materials were relevant to discovery in the third party's case.[2]

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[2] A Motion for Clarification of the preliminary injunction was subsequently filed by Plaintiff and heard on December 8, 1982. By Order of December 23, 1982, prepared by Plaintiff, a more complicated procedure for discovery by third parties was entered.

On November 18, 1982, Mary Sue Hubbard (hereinafter "intervenor") filed a motion to intervene which was heard and granted on November 29, 1982. An amended complaint in intervention was filed on December 8, 1982 alleging conversion, invasion of privacy, return of personal property, and declaratory and injunctive relief. The amended complaint in intervention and the declaration of Mary Sue Hubbard contradict the Complaint and accompanying declarations of the Church of Scientology of California with respect to the most fundamental issues in this case, to wit, who had the right to possess the documents at the time of the alleged conversion. The original declaration of the corporation claimed that it owned the materials, had the right to possess them,and that Defendant Armstrong was given permission to give the documents to an author, Omar Garrison, to write a biography of Hubbard. Intervenor claims that she and her husband own the documents, and that no such permission was ever given.

On or about October 24, 1983, a joint Motion for Partial Summary Judgment was filed by Plaintiff and Intervenor. The Motion sought a permanent injunction returning the documents and materials to Plaintiff based upon the contention of Plaintiff and Intervenor that no triable issue of fact existed as to the Plaintiff's and Intervenor's right to present possession of the same.

The Motion was heard on January 12, 1984 and denied. The Court found that there were too many documents and issues involved in a decision on the Motion, and further found that as to the causes of action for which summary

adjudication were requested, Plaintiff and Intervenor requested damages as well as injunctive relief.

Thus, for a period of approximately eighteen months, the documents and materials have been in the safe and protective custody of the Clerk of the Superior Court.

It should further be noted that Defendant Armstrong filed a Cross-Complaint for fraud, intentional infliction of emotional distress, breach of contract and tortious interference with contract naming Plaintiff and L. Ron Hubbard as Defendant's. The Cross-Complaint was severed from the underlying action upon the motion of Plaintiff and Intervenor.

II

STATEMENT OF FACTS

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up a formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, an integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the

Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization. Thus, any statement that Hubbard resigned from the directorship of Scientology is inaccurate.

Beginning in 1979, Defendant Armstrong resided at Gilman Hot Springs, California in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

In January of 1980, there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

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During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research (a true and correct copy of the Petition is attached as Exhibit "A").

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract

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between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars Complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out", a mission to work out legal strategy which would protect Mr. Hubbard from legal responsibility while he maintained control of Scientology organizations through his personal representatives. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980, that Hubbard left the location in Gilman Hot Springs, California and went into hiding because he was sought by several pending grand juries and government agencies. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went to the Commodore's Messenger Organization, the personal representatives of Hubbard.

In June of 1980, Defendant Armstrong became involved in the selection of a writer to the Hubbard biography. Defendant Armstrong learned that Hubbard had approved of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980, Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time. This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. Thus, on October 30, 1980, an agreement was entered into between Ralston-Pilot, Inc. F/S/O Omar V. Garrison, and AOSH DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

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Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an office assistant and/or research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."
> (A true and correct copy of said agreement is attached hereto and Exhibit "B").

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980, Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter, Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

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(A true and correct copy of said letter is attached hereto as Exhibit "C").

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher. (A true and correct copy of said letter is attached hereto as Exhibit "D").

On October 15, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials. (A true and correct copy of said letter is attached hereto as Exhibit "E").

Although Intervenor has denied that Defendant Armstrong was ever given permission to gain access to or copy any of the personal papers of Hubbard, her denial is directly contradicted by the correspondence prepared and sent by Defendant Armstrong to Intervenor.

Further, it was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's boy scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980 to her in which Defendant stated, at page 7, that there

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were materials in the "Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for Mr. Garrison - one for Mr. Garrison and

the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their care.

It was not until late 1981 that Plaintiff was to provide a person to assist on the biography project by providing Mr. Garrison with "Guardian Office" materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaughn Young. It must be understood that Controller Archives and Guardian Office Archives had no connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected, assembled, and read hundreds of thousands of pages of documentation in Hubbard's Archives.

During 1980, Defendant Armstrong remained convinced of Hubbard's honesty and integrity, and believed that the representations he had made about himself in various

publications were truthful. Defendant Armstrong was devoted to Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books, and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organi-

zation and its leader discontinue the perpetration of the massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved Defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called an E-meter (true and correct copies of Hubbard policies on security checks are attached hereto as Exhibit E-1).

The Organization wished to determine what materials Defendant Armstrong had provided to Omar Garrison. Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the public about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning and that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25, 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding

Hubbard were done in good faith. In his letter he stated as follows:

> "If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.
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> "and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.
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> "We are in a period when 'investigative reporting' is popular and when there is relatively easy

access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm talking here about biographical or non-technical writings. This only leads, should any of his statements turn out to be inaccurrate, to a make-wrong of him, and consequently his technology.

"That's what I'm trying to remedy and prevent.

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"To say that LRH is not capable of hype, errors or lies is certanly not granting him much of a beingness. To continue on with the line that he

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has never erred nor lied is counter-productive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.

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". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."
(A true and correct copy of said letter is attached hereto as Exhibit "F".)

The remainder of the letter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate, and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981, Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in his commitment Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories of materials. In fact, on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison. (A true and correct copy of said letter is attached hereto has "Exhibit "G").

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant Armstrong continued to assist Mr. Garrison with the Hubbard biography project. This is evidenced not only by Defendant Armstrong's correspondence, but also by his continued contact with Hubbard representatives at the Organization. In the Spring of 1982, Defendant Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set up shelves for Mr. Garrison for all the biography research

materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists. (A true and correct copy of said Suppressive Person Declare Gerry Armstrong of February 18, 1982 is attached hereto as Exhibit "H").

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time, a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with eighteen different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church its founder and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows any suppressive person to be "tricked, cheated, lied to, sued, or destroyed." (A true and correct copy of the Suppressive Person Declare Gerry Armstrong dated April 22, 1982 is attached hereto and Exhibit "I").

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding

on board Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, to the Organization. Although Defendant Armstrong delivered the photographs, he never received payment or return. When he went to the Organization to request return of the photographs, he was told to leave the premises and get an attorney. Apparently, the Organization believed he had taken the photographs from Hubbard Archives.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger. In addition, Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of

these individuals; having two attempts made by said individuals to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors.

Defendant Armstrong was clearly made the subject of the "Fair Game Doctrine" simply because he believed that the numerous frauds and misrepresentations perpetrated by the Plaintiff, Intervenor, and Hubbard upon innocent Scientologists and the public had to be aired.

III

DEFENDANT ARMSTRONG HAD AN AGENCY/CONTRACTUAL RELATIONSHIP WITH L. RON HUBBARD ARISING OUT OF THEIR AGREEMENT WITH RESPECT TO THE BIOGRAPHY PROJECT AND SUPPORTED BY DEFENDANT ARMSTRONG'S ACTIONS IN RELATIONS THERETO.

As stated in the foregoing statement of facts, Defendant Armstrong petitioned L. Ron Hubbard on January 8, 1980 to perform the work of Biography Researcher, which had hitherto never been done. In the petition, Defendant Armstrong outlined duties he would perform, which included collecting Hubbard documents from around the world, seeing to their proper preservation, collecting all Hubbard manuscripts and Hubbard writings of any kind, gathering of personal

contacts for public relations and biographical/anecdotal use, interviewing individuals for the same, liaisoning with the biographer for documentation and data, as well as other things. (See Exhibit "A").

This petition was approved by Hubbard (see true and correct copies of letters produced by Plaintiff attached hereto as Exhibit "J"). Further evidence of Defendant Armstrong's approval for this job is a letter of introduction dated July 29, 1980 from Mr. Hubbard's personal secretary. (A true and correct copy of said letter is attached hereto and Exhibit "K"). Thus, Defendant began his work as Biography Researcher and Hubbard Archivist in early 1980.

Defendant Armstrong was initially informed by Alan Wertheimer, Esq. and Laurel Sullivan, representatives of Hubbard, that Defendant Armstrong would be paid by Hubbard. In letters of November 17, 1980 and December 2, 1980, Hubbard's Attorney, Alan Wertheimer, sets forth compensation to be paid Hubbard in connection with the biography project. In that regard, Mr. Wertheimer states at paragraph 5 of the November 17 letter that Hubbard would be "reimbursed for all out-of-pocket expenses in connection with the compilation of the Archives, including, without limitation, salaries paid to employees hired by him in connection with said compilation, office supplies, duplicating costs, postage and any necessary travel expenses." (A true and correct copy of said letter of November 17, 1980 is attached hereto as Exhibit "L").

In the letter of December 2, 1980, paragraph 5, Mr. Wertheimer further states that "Mr. Hubbard already has

ownership and possession of the Archives." (A true and correct copy of said letter of December 2, 1980 is attached hereto as Exhibit "M"). Thus, from the very beginning, it was fully intended that Hubbard would be paying all costs in relation to the biography project, including employees' salaries. However, because of legal difficulties Mr. Hubbard was apparently undergoing and because he went into hiding, it could not be admitted that there was a direct communication line to Hubbard for payment. Thus, payment came from other sources, as indicated in the statement of facts, which sources were close to Hubbard.

Plaintiff and Intervenor have alleged that Defendant Armstrong was at all times acting as a "Scientology" staff member and receiving a "weekly stipend from the Church." There is no evidence, however, the Defendant Armstrong was paid by Plaintiff. The only Internal Revenue Service withholding forms produced by Plaintiff were the following: one for 1977 in the sum of $346 and one for 1978 in the sum of $34.40. (True and correct copies of said withholding forms are attached hereto as Exhibit "N").

The relationship created between Defendant Armstrong and Hubbard was clearly an agency/bailee relationship based upon their agreement. Defendant Armstrong was the person who sequestered the materials of Hubbard and was overwhelmingly in control of them. As indicated in the Statement of Facts, Defendant Armstrong carried out all of the duties he was to perform as Biography Researcher and

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Archivist on behalf of Hubbard. Whether an agency relationship has been created is to be determined by the relation of the parties as it in fact exists under their agreement or acts. Nichols v. Murray (Arthur, Inc.), 248 Cal. App. 2d 610, 56 Cal. Rptr. 728 (1967).

In Defendant Armstrong's dealings with Mr. Garrison, Mr. Garrison always considered Defendant to be Hubbard's representative and not a representative of Plaintiff. On July 12, 1983, Mr. Garrison testified at his deposition as follows:

> "Q. Was Mr. Armstrong acting and providing you with the materials in his capacity as the Archivist for the Church --
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> A. No.
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> Q. -- in providing the materials?
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> A. No. He was providing me -- he was acting directly as the representative of L. Ron Hubbard, it was my understanding.
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> Q. You told me that he was the Archivist.
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> A. That's right, but he had -- you must realize the Archives belonged to L. Ron Hubbard, not to the Church. The Church never had

possession of the Archives, in my opinion, if you are asking for my opinion."
(Garrison D. Tr., pp. 57-58 attached hereto as Exhibit "O-1").

It must be understood, that Defendant Armstrong assembled what is now known as Hubbard Archives. The only reason the Hubbard Archives was located at the premises of Church of Scientology Cedars Complex in Los Angeles, was because Defendant Armstrong brought the materials to that location. That location was chosen when Defendant Armstrong was working on the MCCS Mission, as stated in the Statement of Facts, just prior to fully beginning his biography and archival duties in June of 1980.

At the time Defendant Armstrong created the Hubbard Archives, there was in existence a "Controller Archives" which contained mainly technical materials regarding the Church of Scientology. An individual by the name Tom Vorm was in charge of Controller Archives. Another area which was not officially a single archive, but referred to loosely as Guardian's Office Archives, was also under the perview of the Church of Scientology.

During the course of his work as Biography Researcher and Hubbard Archivist, Defendant Armstrong was able to obtain documents from Controller Archives which would more appropriately be in Hubbard Archives.

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Thus, Defendant Armstrong considered himself, at all times, a representative of Hubbard, and further acted in that capacity. He carefully collected, assembled, maintained and provided Hubbard documentation and materials to the biographer in connection with his work. At the time, he was a willing, but unwitting, participant in what he later found to be an attempt to further the fraudulent misrepresentations about Hubbard's background and accomplishments in a biography.

A. AN AGENT IS UNDER NO LEGAL DUTY NOT TO DISCLOSE HIS PRINCIPALS' DISHONEST ACTS TO THE PARTY PREJUDICIALLY AFFECTED BY THEM.

As stated in the Statement of Facts, over the period of time that Defendant Armstrong worked as Hubbard Biography Researcher and Archivist, he read pages and pages of documentary evidence which clearly showed that the representations the Church of Scientology (including Plaintiff herein), Intervenor and Hubbard had made about Hubbard's background, credentials, and accomplishments were either wholly false or inaccurate.

In order to understand the significance of this finding by Defendant Armstrong, it must be understood that in order to make Hubbard appear to be qualified to write on the

many areas of which he has written, Plaintiff and the Hubbards have made numerous misrepresentations to the public about Mr. Hubbard's past. A small portion of these misrepresentations include that Hubbard was raised on a cattle ranch in Montana, that he traveled extensively through Europe and Asia, that he graduated from George Washington University and attended the graduate school at Princeton University, that he worked extensively in Hollywood and the movies in the 1930's, that he had a distinguished Naval record during World War II, that he was crippled and blinded in World War II and healed himself through Dianetic auditing, that he was a medical doctor, that he was a nuclear physicist, and that he was a Hollywood movie writer and director in 1946. These misrepresentations were extensively publicized in order to convince people, like Defendant Armstrong, to accept membership in the Church of Scientology and purchase Scientology courses and materials for great amounts of money.[3]

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[3]At the time Defendant Armstrong was learning of the vast amount of misrepresentations made to innocent Scientologists and the public at large, there were already numerous suits filed by ex-members of the Church of Scientology for fraud and breach of contract based upon these misrepresentations.

The documents which Defendant Armstrong was in charge of, some of which are under seal in this Court, conclusively established that L. Ron Hubbard is a fraud. They also establish that certain promises and claims made by the Church of Scientology regarding its own credibility are false.

It must be remembered that the documentation Defendant Armstrong assembled as the Hubbard Archivist were used by Mr. Garrison to write the "authorized" biography of Hubbard. This biography, which would ultimately be approved by Hubbard himself, was clearly to be used as a vehicle to memorialize the fraudulent version of the life of Hubbard which had hitherto been published as profiles about Hubbard in books authored by him. (True and correct copies of said biographical sketches are attached hereto as Exhibit "P").

Defendant Armstrong had never been advised that the purpose of the biography was actually to conceal the truth about Hubbard and to prevent innocent Scientologists and the public from knowing about fraudulent misrepresentations having been made in the past. Initially, Defendant Armstrong believed that the misrepresentations had only been made through innocent mistakes on the part of the Church of Scientology (including Plaintiff) and the Hubbards. As indicated in the Statement of Facts, Defendant Armstrong, in good faith, disclosed the information he had discovered in the course of his work to representatives of Scientology and Hubbard. (See Exhibit "F").

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Under the law of principal and agent, an agent bears a fiduciary relationship to his principal which requires, among other things, the disclosure of all information in the agent's possession relevant to the subject matter of the agency. Sierra Pacific Industries vs. Carter, 104 Cal. App. 3d 579, 163 Cal. Rptr. 764 (1980). Although the agent must act in good faith toward his principal and maintain confidential information acquired through the agency relationship, the law clearly provides that an agent is under no legal duty not to disclose his principal's dishonest acts to the party prejudicially affected by them. Willig v. Gold, 75 Cal. App. 2d 809, 171 P. 2d 754 (1946).

In the case of Willig v. Gold, supra, Willig, the owner of a business, attempted a sale to Gold, which sale was not successful. Gold then undertook to secure a purchaser of the business for Willig for which he would be paid a commission. During the course of their negotiations, Willig had disclosed to Gold the volume of his business over a certain period. At the time, Willig was insured by Rathbone, King and Seely with the premium payments measured by the volume of business done by Willig. Willig had misrepresented to his insurer the amount of premiums due to them, and had disclosed this information to Gold during their negotiations.

After Gold secured a purchaser for the business, Willig refused to pay him more than $3000 for his services. Gold then entered into a written agreement with Rathbone, King and Seely for a percentage of their recovery against Willig, after disclosing information to them that Willig had

misrepresented the amount of premiums due them. The insurers filed suit for unpaid premiums against Willig which was compromised for $30,000. Willig filed a complaint in intervention asking, (1), for recovery of the $3000 paid to Gold as a commission on the ground that the transaction was illegal because Gold was not licensed as a business opportunity broker; and (2), for the recovery of $7215.49 percentage collected by Gold on the theory that it was the fruits of a breach of a confidential relationship existing between agent and principal.

The trial court denied Willig recovery on both grounds and Willig appealed.

On appeal, the court responded to Willig's breach of confidential relationship theory as follows:

> "Appellant's second claim is somewhat startling. He argues in effect that because of the agency relation which had previously existed, Gold was under a duty not to disclose to Rathbone, King and Seely that Appellant had made false returns to them and as a result paid them a smaller premium than they were entitled to receive. He cites no case, and we are sure that none can be found, that an agent is under a legal duty not to disclose his

principal's dishonest acts to the party prejudicially affected by them."

Id. at 757.

The Willig case is closely analogous to the case at bar. In the present case, Defendant Armstrong, as agent, received documents of his principal, which documents were to be used for the preparation of a biography and also for use in a Hubbard museum. During the course of this agency relationship, Defendant Armstrong discovered that the documentation and materials with which he was working to create a Hubbard biography contained extensive evidence of fraudulent misrepresentations affecting hundreds of thousands of individuals who had relied on what they believed to be the background and accomplishments of a man on whose credibility they were induced to join the Scientology Organization.

Defendant Armstrong had equally been induced, by the alleged background and credentials of Hubbard, to join the Scientology Organization, to devote one third of his life to Hubbard and the Organization, and to revere a man whom Defendant Armstrong believed to be faultless.

The Restatement of Agency, second is in accord with the Willig case. Section 418 of the Restatement provides that:

"An agent is privileged to protect interests of his own which

are superior to those of the principal, even though he does so at the expense of the principal's interests or in disobedience to his order."

Further, section 395 of the Restatement discusses the use or disclosure of confidential information. Under that section, an agent is subject to a duty to the principal not to use or to communicate information confidentially given to him by the principal or acquired by him during the course of his agency. Under comment f of section 395, however, it states:

> "An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or the third person. Thus, if the confidential information is to the effect that the principal is committing or is about to commit a crime, the agent is under no duty not to reveal it."

This privilege was recognized in the case of Pearson v. Dodd, 410 F. 2d 701 (D.C. Cir. 1969). The Pearson case involved a civil suit for damages for invasion of

privacy and conversion brought by Senator Dodd against newspaper columnist Drew Pearson and Jack Anderson. The suit charged that Pearson and others, former employees of the Senator, entered the Senator's office without authority and without his knowledge, removed numerous documents from his files, copied and replaced the originals, and then turned the copies over to Defendant Anderson, who was aware of the manner in which they were obtained. Pearson and Anderson then published articles containing information taken from the documents.

In a footnote, the Court recognized Defendant's argument that they had committed neither conversion nor trespass nor invasion of privacy, because their actions were privileged by a public policy in favor of exposing wrong-doing. The Court then quoted comment f of the restatment of agency, second, section 395.

Although Plaintiff and Intervenor claim that Defendant Armstrong violated fiduciary duties by disclosing the contents of the documents to attorneys and others, it is clear under the case law that Defendant Armstrong was privileged to do so. He was simply protecting his interests and the interests of those whose rights would be prejudiced, should the information he obtained during his agency not come to light. By his release of the information he obtained, he did not seek to gain any economic advantage. Defendant Armstrong had been the most loyal member, employee and agent of Hubbard and the SEA Organization. However, when it became evident to him that frauds were being committed, he was

privileged to protect the interests of himself and third parties prejudicially affected by said fraud.

The contents of the documents are the evidence of the frauds which Defendant Armstrong sought to expose. The contents are thus highly relevant to his defense of breach of fiduciary duty and confidence.

Plaintiff and Intervenor have, in the past, cited extensively from the case of Carpenter Foundation vs. Oakes, 26 Cal. App. 3d 784, 103 Cal. Rptr. 368 (1972), regarding, among other things, breach of a relationship of trust and confidence. The Carpenter case, however, is not analogous to the case at bar.

In Carpenter, Plaintiff, a non-profit corporation, was founded for the purpose of preserving items about Mary Baker Eddy, the founder of Christian Science, and making such items available to qualified students. Defendant had received the materials from plaintiff on the basis that he would only disclose them to qualified students of Christian Science. Defendant, however, published two books in South Africa which consisted in large part of extracts from the Carpenter materials. The court found that defendant had breached a relationship of trust and confidence regarding the extent to which the materials would be used and issued an injunction preventing further production or distribution of the books, and calling for surrender to plaintiff of all Carpenter materials in defendant's possession.

Although the Carpenter case may, at first glance, appear to be analogous to the present case, it is in fact

only analogous on a superficial level. It is true that Defendant Armstrong has testified that he was authorized to use the subject documents and materials only with respect to the Hubbard biography and museum. Defendant Armstrong has also testified that he did not believe Hubbard would have authorized delivery of archival materials to attorneys. The glaring difference between the facts of Carpenter and the facts of this case are magnified by the fact that there is no evidence in the Carpenter case that the materials given to Defendant contained evidence of frauds. In addition, the defendant in Carpenter simply published the materials for his own economic gain.

In the present case, Defendant Armstrong disclosed the contents of the documents to attorneys, because he believed that they contained evidence of fraud. He did not seek, by said disclosure, to gain economic benefit through publication. Thus, the Carpenter case is inapplicable.

IV

DEFENDANT ARMSTRONG IS NOT LIABLE FOR CONVERSION

Because of the stringent measure of damages in conversion actions, it has long been recognized that not every wrongful interference with the personal property of another is a conversion. Fouldes v. Willoughby, 151 Eng. Rpt. 1153 (Exch. 1841). Where the intermeddling falls short of the complete or very substantial deprivation of possessor

rights in the property, the tort committed is not conversion but the lesser wrong of trespass to chattels. Prosser, "The Nature of Conversion," 42 Cornell Law Quarterly 168 (1957).

The Restatement of Torts, second, section 222A (1) has noted the distinction by defining conversion as follows:

> "(A) An intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel."

Less serious interferences fall under the Restatement's definition of trespass. That definition states:

> "A trespass to a chattel may be committed by intentionally (a) dispossessing another of the chattel, or (b) using or intermeddling with the chattel in the possession of another."
> Id. at section 217.

In the case of Pearson v. Dodd, 410 F. 2d 701 (D.C. Circuit 1969), the court was faced with a fact situation

closely analogous to the one at bar in which the plaintiff had sued for conversion, among other things. The facts of the Pearson case were stated above and will thus not be repeated here.

In that case, the trial court had granted partial summary judgment to plaintiff Senator Dodd on the theory of conversion. On appeal, however, the District Court of Appeal reversed.

In its analysis, the court drew on the distinction between conversion and trespass to chattels, and in finding no conversion had occurred, stated as follows:

> "It is clear that on the agreed facts appellants (defendants) committed no conversion of the physical documents taken from appellee's (plaintiff's) files. Those documents were removed from the files at night, photocopied, and returned to the files undamaged before office operations resumed in the morning. Insofar as the documents' value to appellee resided in their usefulness as records of the business of his office, appellee was clearly not substantially deprived of his use of them."
>
> Id. at 707.

There is no dispute in this case that Defendant Armstrong left the originals of all documents he copied for the biographer in the Hubbard Archives. Of the copies Defendant Armstrong delivered to Mr. Garrison, originals remain in Archives. Of the originals that Defendant Armstrong delivered to Mr. Garrison, copies remain in Archives. None of the documents left by Defendant Armstrong in the Hubbard Archives were damaged by him in any manner. As in Pearson, Defendant Armstrong simply copied the materials, pursuant to his agency relationship, returned originals and/or copies to Hubbard Archives, and delivered the duplicate set to Mr. Garrison. It is undisputed that Defendant Armstrong was authorized to perform this task as part of his Biography Researcher/Archivist duties.

Defendant Armstrong thus believes that the allegation of conversion enters at the time he delivered copies of the documents to attorneys in the early summer of 1982. However, neither Plaintiff, Intervenor, nor Hubbard have been deprived of their use of the subject documents, since either originals or copies presently exist in the Hubbard Archives. Further, Defendant Armstrong was privileged in the disclosure of said materials to his attorneys because they contained evidence of fraud. Thus, as found in Pearson, Defendant Armstrong committed no conversion.

The Pearson court also addressed the question of whether the information taken by means of copying Senator Dodd's office files is of the type which the law of conversion protects. The Court stated as follows:

"The question here is not whether appellee had a right to keep his files from prying eyes, but whether the information taken from those files falls under the protection of the law of property, enforceable by a suit for conversion. In our view, it does not. The information included the contents of letters to appellee from supplicants, and office records of other kinds, the nature of which is not fully revealed by the record. Insofar as we can tell, none of it amounts to literary property, to scientific invention, or to secret plans formulated by appellee for the conduct of commerce."
Id. at 708.

The court went on to state:

"Appellee complains, not of the misappropriation of property bought or created by him, but of the exposure of information either (1) injurious to his reputation, or (2) revelatory of matters which he

> believes he has a right to keep to himself. Injuries of this type are addressed at law by suit for libel and invasion of privacy respectively where defendants' liability for those torts can be established under the limitations created by commonlaw and by the Constitution."
> Id. at 708.

The documents in question are comprised, for the most part, of letters to and from various individuals, as well as naval records, various certificates of Hubbard, documentation regarding legal and financial matters, public relations documentation, two cassette tape recordings regarding funnelling of monies to Hubbard, photographs, an unpublished manuscript entitled "Excalibur", and other materials.

As in Pearson, the subject documents are mainly letters and memoranda, with a very minute portion related to literary work. There is no evidence in the record to show that Defendant Armstrong converted the physical contents of any literary or scientific work. He brought the subject documents and materials to his attorneys and thereafter prepared several affidavits and declarations drawn upon information contained in certain documents and in the two cassette tapes. (True and correct copies of three such affidavits of Gerald Armstrong are attached hereto as Exhibit "Q").

It must be remembered that unlike the cases cited by Plaintiff and Intervenor, such as Carpenter v. Oakes, this case involves documentation and materials which contain evidence of fraudulent misrepresentations. In that regard, it is the contention of Defendant that he committed neither conversion nor invasion of privacy nor breach of fiduciary duty/confidence because of a privilege based upon a public policy in favor of exposing wrong-doing, fraud, and crime. Pearson, supra, at 705 n. 19.

The documents and materials are admissible evidence at trial to show that Defendant Armstrong is privileged in disclosing the contents of the documents, because they evidence frauds. This extends to all causes of action brought by Plaintiff and Intervenor against Defendant Armstrong. The contents are relevant to the question of whether or not the documents and materials are protected property subject to a suit for conversion.

(1) The Type Documents Involved In This Case Cannot Be "Converted"

Defendant anticipates that the Court should grant a motion for a directed verdict at the conclusion of the Plaintiff's opening at least with respect to the conversion count. This anticipation is predicated upon the fact Defendant has found no case in any jurisdiction throughout the United States that allows a cause of action for conversion of documents and information. Indeed, every case which Defendant has found has held that there is no cause of action for conversion of documents and information and where

such documents or information constitute literary works or commercial instruments, the appropriate cause of action is for copyright infringement and not for conversion. Further, in every case which Defendant has located where documents and information have been involved, the Courts have generally found some type of legal justification or privilege attaching to the possession of the documents and/or dissemination of information in the documents based on legal privilege. Defendant will discuss these cases, seriatim.

The Pearson case, supra, specifically held that the contents of the plaintiff's office files stolen by the plaintiff's employees in that action and given to the defendant, did not constitute conversion because the plaintiff was not substantially deprived of the use of the files and because the information contained in the files did not fall "under the protection of the law of property enforceable by a suit for conversion." 410 F.2d at 708. The Pearson case has been recognized by the Second District Court of Appeals of California in the case of People v. Kunkin, 24 Cal. App. 3d 447, 100 Cal. Rptr. 845, (1972). The Court in the Kunkin case analyzed the Pearson v. Dodd case at length, distinguished it from the facts in that case relating to the definition of "stolen property" and concluded as follows:

> "The specific holding in Dodd was that the documents and information involved were not the type of intangible property whose appropriation

> could support an action in conversion. In so ruling, the court stayed within the traditional boundaries of the law of conversion, which in dealing with intangible rights relating to documents has limited its scope to conversion of intangible rights which have merged into documents (checks, notes, stock certificates, warehouse receipts). [Citation omitted.] Patently, Dodd does not hold that documents are not property. Rather it holds that information in non-commercial documents is a form of property for whose appropriation an action in conversion will not lie." (Emphasis supplied.)

The legal principle that information cannot be "converted" was upheld in the criminal case of U.S. v. Truong Dinh Hung, 629 F.2d 908, 922 (4th Cir., 1980), wherein the Fourth Circuit Court of Appeals interpreted the language of 18 U.S.C. § 641. That statute renders criminally liable any person who "converts to his use or the use of another, or without authority, sells, conveys or disposes of anything of value of the United States." Defendants were convicted under that statutue on the theory that they converted government

property in the form of classified information when they stole copies of secret documents in the possession of the United States Information Agency. The Court thereafter upheld the defendant's argument that "information cannot be 'converted' because the common law tort of conversion requires that the legitimate owner be deprived of possession," citing the Pearson case. The Court thereafter held that the espionage statutes relating to the theft of classified information applied to the facts of that case but that the "conversion" statute was inapplicable.

There is also a line of cases which hold that the conversion of documents and information which fall within the category of literary works and intellectual "property" cannot be converted because the appropriate cause of action is for copyright violation.

The case of Harper & Row Publishers, Inc. v. Nation Enterprises, 501 F. Supp. 848, 852-854 (S.D.N.Y., 1980), involve the wrongful taking and possession of a copy of the unpublished manuscript of President Gerald Ford's memoirs. The plaintiff in that action claimed that the unlawful possession of the memoirs constituted the tort of conversion. The Court held that the conversion claim was "preempted" by the New York Copyright Act and dismissed the claim for conversion.

The Federal District Court for the Southern District of California in the case of Pickford Corporation v. De-Luxe Laboratories, 169 F. Supp. 118 (S.D. Cal., 1958), supplemental opinion to 161 F. Supp. 367, (S.D. Cal., 1958),

reached the same result as the Harper & Row case. In the Pickford case, a conversion action was brought under California law by the owner of the original negatives of a motion picture film against the bailee to whom the negatives had been delivered by the owner so that the bailee could make prints of the film on order of the owner. The bailee thereafter exhibited the film on television. In its first opinion, the Court held that the conversion action was barred by the statute of limitations. In its second opinion, the Court held that an action for conversion is "wholly inconsistent with an action for copyright infringement in that plaintiff's claim in that case was essentially for copyright infringement which was also barred by the statute of limitations." 169 F. Supp. at 120. The Court relied on the case of Italiani v. Metro-Goldwyn Mayer, 45 Cal. App. 2d 464, 114 P.2d 370, (1941), in support of the argument that the taking of "an intangible incorporeal right" cannot constitute a violation of the law of conversion. Other cases have reached the same result. See Local Trademarks, Inc. v. Price, 170 F.2d 715, (5th Cir. 1948) where the Fifth Circuit Court of Appeals held that an action for infringement of a copyright is not an action for conversion of personal property.

In the present action, Defendant will demonstrate that first, the documents and information now held under seal by this Court do not constitute either (a) literary property, or (b) documents of a commercial nature. Therefore, the documents and information are not such "property" as to support an action for copyright infringement. Indeed, there

can be no showing that Defendant in this case has attempted to publish or gain an economic advantage as a result of his rightful possession of the documents and information. Secondly, Plaintiff has not been deprived of the use of the documents and information because it has possession of the originals and/or copies of all documents presently under seal. Third, the documents and information under seal fall squarely within the holding of the Pearson v. Dodd case which held that the type of documents and information involved in that case, which are identical to the type of documents involved in the present case, cannot support an action for conversion. The Pearson v. Dodd case further held that in order to support an action for invasion of privacy, the plaintiff in that action had the burden of proving that the documents and information which were stolen from him was not private but was a matter of public interest regardless of how the documents and information were obtained and the defendants in the case had the right to show that the documents and information were of such public interest as to warrant their publication.

(2) Defendant Has a "Privilege" to Maintain Possession of the Documents

In the present case, Defendant intends to make an overwhelming showing that L. Ron Hubbard is a public figure, that the information contained in the documents under seal relates to matters of public interest, that literally thousands of people have been defrauded of millions of dollars based upon fraudulent representations of the

Plaintiffs and L. Ron Hubbard, that the materials under seal contain specific evidence of such false representations and that such false representations in the interest of the public in obtaining information about such falsity overwhelmingly supersedes the interests of the Plaintiffs and Hubbard to conceal such information. As Defendant will hereinafter demonstrate, not only was he in rightful possession of the documents and information now under seal, but he has a legal "justification" or "privilege" to possess the documents and to make them available to the public. Such justification and privilege defeats Plaintiff's and Intervenor's action for conversion.

In addition to the legal arguments set forth above to the effect that no cause of action lies for conversion in this case, and in addition to Defendant's argument (See infra) that Plaintiff cannot possibly meet its burden of proof that either it or the Intervenor had the right to possess the documents and information at the time of the alleged conversion, Defendant will demonstrate at trial that he has the defenses of privilege, legal justification, and contract all in support of his present right to possess the documents. These defenses have long been recognized as proper defenses to the tort of conversion.

In the case of Barrett v. Fish, 47 A. 174 (1899), the plaintiff brought an action in equity to recover private letters which the plaintiff had intrusted to a third party for the purposes of having them burned who in turn kept them and delivered them to the defendant in the action. The

private letters were to be used as evidence in separate and unrelated litigation against the plaintiff. Although the Court noted that as to the defendant, the plaintiff was the rightful owner of the letters, the Court held that the letters could not be returned to the plaintiff because they were to be used as evidence in the separate legal proceeding. The Court stated that the records "must be produced 'for the furtherance of the ends of justice,'" (47 A. at 175) because they were not privileged from production in a separate legal proceeding. The Court concluded as follows:

> "By her own folly, important evidence against . . . [plaintiff] in Poland was placed in the hands of Hyde, and through his action it has come to the possession of the defendant. It is apparent that the sole purpose of this proceeding is to enable the . . . [plaintiff] to obtain possession of this evidence, that she may suppress or destroy it, so that peradventure the ends of justice may be thwarted."

In the present case, Defendant will produce extensive evidence through numerous witnesses that he came into the possession of the documents because of the orders of the Plaintiff, Intervenor, and L. Ron Hubbard to have all

documents relating to Hubbard's control or association with the Church of Scientology destroyed in a massive shredding operation which was conducted while the Intervenor was under indictment, while several grand juries in various areas of the United States were pending, and while Plaintiff, Intervenor and Hubbard all believed that an F.B.I. raid was about to take place on the property where the documents were kept. Therefore, Defendant obtained possession of the documents as did the defendant in the Barrett case, supra, when the documents were about to be destroyed for the purpose of obstructing justice. Once Defendant obtained the documents and kept them under his contract with Hubbard, and after reviewing them, he realized that the documents contained extensive evidence relating to then pending litigation, and also relating to the fact that they proved Hubbard's involvement in a monstrous fraud. Indeed, the documents and information presently contained under seal in this Court specifically prove the following:

(1) Hubbard's claim that he was crippled and blinded from four years of combat in the United States Navy during World War II and that he was cured by the process of Dianetics was totally false. The documents prove that Hubbard never served in any combat, was never crippled or blinded, and that Dianetics didn't cure these conditions. Defendant, as Hubbard's former "public relations officer," had personally represented to hundreds of people based on biographical data supplied by Hubbard that the representations that Hubbard was crippled and blinded and was

cured by Dianetics were true. When Defendant observed these documents in Hubbard's own handwriting, he realized that such representations were totally false, that the representations that had been made in writing to thousands of people who had paid millions of dollars were all defrauded based on such representations.

(2) Hubbard had claimed that he was twice pronounced dead as a medical fact. Defendant knew that he and thousands of others had specifically relied upon this fact and that the documents conclusively proved that this fact was false.

(3) Hubbard had represented that he had graduated from George Washington University as a physicist, that he had graduated from Princeton University with a doctorate in physics, that he was a medical doctor, and that he had conducted thirty years of scientific research as a physicist in the "discovery" of Dianetics. The documents conclusively prove that Hubbard flunked out of George Washington University after a semester and one-half, never attended Princeton University, was not a medical doctor, and had conducted no research for the writing of Dianetics.

(4) Hubbard had represented that in connection with his four years of naval combat, he was "one of the most decorated officers in World War II," that he received two purple hearts, and that he was extensively decorated as a war hero. Hubbard's naval records, which are among the documents under seal, conclusively prove that all of the foregoing representations are false, that Hubbard was relieved of duty

on three separate occasions and ended up in a psychiatric hospital thereby avoiding any combat. Defendant, as Hubbard's personal public relations officer, had stated and knew that thousands of individuals had relied on the foregoing representations.

(5) Hubbard had represented that other than his combat wounds cured by Dianetics, Hubbard had a "perfect health history" and promoted himself as one of the most healthy and mentally and emotionally stable human beings to ever live. Hubbard had represented that he was free of any drug history and totally free of any mental and emotional problems or instability. The documents presently under seal conclusively prove that the foregoing representations are false, that Hubbard suffered from severe mental and emotional illness, memory loss, venereal disease, drug addiction, severe sexual aberration, suicidal inclination, and megalomania. The documents further prove that Hubbard specifically falsified his medical history shortly after World War II for the purposes of obtaining a veteran's disability and that at the time that Hubbard falsified his medical history, he knew that he was falsifying it.

(6) Hubbard had represented to thousands of people that he was a "family man" with a stable marital and domestic history. The documents prove that Hubbard bigamously married his second wife while still married to his first wife, that he beat up, tortured, and subjected his second wife to bizarre black magic rituals, that he kidnapped his daughter by his second wife, that he was arrested by the Los Angeles

Police in connection with a domestic relations dispute involving the daughter, and that he has lived an extremely unstable family and marital life.

(7) Hubbard had represented that he did not specifically originate the Church of Scientology as a religion, that he held no relationship or control of any nature or description over any Church of Scientology corporations since at least 1966, that he had not received any funds from the Church of Scientology since 1966, other than consulting fees less than $35,000 per year, and that he had not had access to or control over church funds. The documents conclusively prove that Hubbard has been stealing millions of dollars of church funds over many years, that he totally dominated and controlled all aspects of all Scientology corporations, that all officers and directors of Scientology corporations resigned in advance and that he held the resignations, that all of the employees within the corporate structure were in actual fact employees of Hubbard, and that Hubbard had used the corporate structure as a religious front solely to avoid legal liability. When Defendant reviewed these documents and was aware of the pendency of existing grand juries, civil litigation throughout the United States, and the threat of an F.B.I. raid, Defendant realized that the documents were evidence of the commission of crimes, particularly fraud.

(8) Defendant had represented, and Plaintiff in this action vigorously disseminated said representations, that neither Hubbard nor the Church of Scientology used the

"Fair Game Doctrine" which had allegedly been "cancelled," applied doctrines relating to "black propaganda," created enemies lists, and attacked its enemies through a whole series of elaborate policies written and prepared by Hubbard and the Plaintiff, in that the Plaintiff and Hubbard did not destroy or conceal evidence of such. The documents under seal specifically prove that the "Fair Game Doctrine" was never "cancelled," that not only the documents but the efforts of the Plaintiff, the Intervenor and Hubbard to destroy the documents is evidence itself of the falsity of Hubbard's representations, and that Hubbard and the Church conducted extensive "operations" against all enemies on specific enemies lists.

Although the foregoing sets forth some of the more specific areas in which the documents relate to misrepresentations by Hubbard, Plaintiff or Intervenor, they are not intended to be all-inclusive. Defendant submits that the very circumstances under which he obtained possession of these documents is not only relevant to the question of <u>who</u> had the right to possession at the time of the alleged conversion, but also evidence of fraud, crime and other anti-social activity. In fact, since the documents were to be destroyed during the pendency of on-going criminal investigations conducted by the F.B.I. and the Justice Department which had already resulted in the indictment of the Intervenor and ten of the top officials of the Plaintiff, the attempted destruction is in itself evidence of commission of the crime of obstruction of justice. There are at least

three federal criminal statutes which relate to the destruction of documents during pending or on-going judicial proceedings. These are 18 U.S.C. § 1503, § 1505, and § 1510. These statutes have been construed by numerous courts to prohibit the willful destruction of documents during both on-going civil and criminal proceedings. See generally, article, "Document Retention and Destruction," 56 Notre Dame Lawyer 5 at 19-30. In the present case, Defendant will testify that he obtained possession of the documents presently under seal specifically in the context of an effort to willfully destroy the documents during the pendency of the on-going criminal investigation relating to the Intervenor and L. Ron Hubbard. Thus, it is clear that Defendant is privileged to maintain possession of the documents not only for his own pending counterclaim against Plaintiff, Intervenor and L. Ron Hubbard, but also for the public, and specifically for other litigants in various areas of the United States who are now seeking to obtain possession of the documents.

The foregoing privilege has not only been recognized in the Barrett v. Fish case, supra, but it has also been recognized in the Restatement of Torts, Second, § 10 and § 263. Section 10 of the Restatement states that "conduct which, under ordinary circumstances, would subject the actor to liability, under particular circumstances does not subject him to liability." The section then goes on to state that the privilege may be based upon "the fact that its exercise is necessary for the protection of some interest of

the actor or of the public which is of sufficient importance as to justify the harm caused or threatened by its exercise." The Restatement of Torts then specifically addresses the issue of privilege as it relates to the torts of conversion or trespass to a chattel. In § 263, the Restatement states as follows:

> "§ 263. Privilege Created By Necessity.
>
> (1) One is privileged to commit an act which would otherwise be a trespass to the chattel of another or a conversion of it, if it is or is reasonably believed to be reasonable and necessary to protect the person or property of the actor, the other or a third person from serious harm, unless the actor knows that the person for whose benefit he acts is unwilling that he shall do so."

In the present case, Defendant is properly maintaining possession of the documents for the purposes not only of defending himself in the present action, supporting his counterclaim in this action, but also in making the documents available through the Court, to other civil

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litigants, governmental agencies, and ultimately to the public at large.

Other cases have held that it is a defense to the tort of conversion that the return of the allegedly converted property would either consummate a transaction in violation of law or be against public policy. In the case of Warshaw v. Eastman Kodak Co., 252 S.E.3d 182, 184-185 (1979), the Court of Appeals of Georgia held that a defendant does not even have to assert a claim of the right to possess obscene materials as against the lawful owner in defense of an action for conversion where the return of the obscene material would result in the Court invoking its power "for the purpose of consummating a transaction in violation of the law." 252 S.E.2d at 185. Citing additional cases, the Court noted that "'it would be against public policy to return obscene material to the owner.'" This defense was also used in the case of Elder v. Camp, 18 S.E.2d 622 at 626, where the Court stated as follows:

> "However, regardless of the place of seizure, it is nevertheless the rule that 'the courts will not lend their aid to a suitor seeking to regain possession of implements of crime, designed for no other purpose than the violation of the law or the injuring of the morals of the people.' Where a sheriff finds

> articles kept for the purpose of gambling, an action of trover by the owner against the sheriffs for their recovery will not lie, since 'courts are created for the upholding of the law and of morals, and will therefore decline to allow their processes used to further the maintenance of crimes and public evils by sifting or protecting such an owner in recovering his implements of crime or illegal paraphernalia.'"

See also Health Sales Company v. Bloodworth, 146 S.E.2d 275, (1965) and Evans Theater Corporation, et al. v. Slaten, 180 S.E.2d 712 (1971). In the case of Eastman Kodak Co. v. Hendricks, 262 F.2d 392, 397 (9th Cir., 1958), the Ninth Circuit Court of Appeals applying California law held that it was a defense to an action of repleven for the return of a motion picture film that the film violated various California obscenity statues and city ordinances. The Court stated:

> "Without fully discussing the cases and the principles involved, this Court is satisfied, assuming that these films fall outside the limits of what is permissible in

> California, that California would follow the reasoning of such cases as . . . [citation omitted] and would not require the return by Eastman to Hendricks of the film."

Similarly, in the present case, if the Court were to return the documents to Plaintiff or Intervenor, it would consummate the intended destruction of the documents and thereby assist in the concealment of crime, fraud, and anti-social acts and policies against the public interest.

Defendant has relied extensively on the case of Carpenter Foundation v. Oakes, wherein the defendant in that action obtained "literary property" belonging to the plaintiff therein and specifically used it for the purposes of publishing the material as "literary property." The Carpenter case has no relevance to the present action. First, it was not an action for conversion. Secondly, there was no showing that the materials contained therein evidenced crime, fraud, illegality, or other anti-social acts. Third, there was no counterclaim by the defendant in that action wherein the materials were needed for purposes of not only that litigation but other litigation, both civil and criminal. Fourth, there was no evidence that the plaintiff in that action intended to destroy or suppress the evidence. In fact, the evidence was precisely the opposite. Plaintiff in that action intended to publish the material itself. Fifth, there was no showing that the plaintiff in that action

was liable to the defendant for wages or fees due to the defendant for his collection of the said materials, as in the case herein.

(3) Defendant is "Legally Justified" to Keep the Documents

In the present action, Plaintiff and Intervenor must prove not only that it had the right to possess the documents at the time of the alleged conversion, but also that the conversion was done without "lawful justification" and its conversion was "wrongful." See Newhart v. Pierce, 254 Cal. App. 2d 783; 62 Cal. Rptr. 553, (1967) and Giacomelos v. Bank of America, 237 Cal. App. 2d 99, 46 Cal. Rptr. 612 (1965). In the Giacomelos case, supra, the Court held that although a trustee bank was not entitled to possess certain stock certificates as against the plaintiff, the defendant bank was not a convertor of the stock certificate in refusing to convey it to the rightful possessor where the intentions of the bank were to secure a reasonable opportunity to inquire into the rights of third parties to possess the property. This principle was also upheld in the case of Stern v. Bricklin, 455 F. Supp. 346, 350 (E.D. Pa., 1978), where the Court held that a bank did not convert plaintiff's collateral securities because it had "the lawful justification to deliver the securities to a third party."

In the present case, the Defendant has the "lawful justification" to maintain possession of the documents until such time as (1) his fees and wages for collecting the documents are paid, (2) the documents are proven to be

available in support of his counterclaim for fraud against Plaintiff and Hubbard, and (3) the determination of the public interest in the documents is resolved.

At least two California cases have held that monies owed by the plaintiff to the defendant in the retention of property or cash by the defendant until such charges are paid by the plaintiff constitutes a defense to conversion. In the case of Pullin v. Allen, et al., 173 P. 772; 37 Cal. App. 218 (1918), attorneys were entitled to defend an action for conversion against clients where the amount owed to the attorneys had not been decided at the time that the client was entitled to the funds. Similarly, in the case of Van Dorn v. Couch, 21 Cal. App. 2d, supp., 749, 64 P.2d 1197, 1200, (1937), the Appellate Department of the Los Angeles Superior Court held that an innkeeper's possession of personal property for purposes of satisfying rent owed by a tenant was a defense to conversion.

In the present action, L. Ron Hubbard owes the Defendant a salary covering a span of approximately two years as is set forth in the Defendant's counter-claim. In fact, Defendant continued to perform his contract with Hubbard to collect the biographical materials and assist the author, Omar Garrison, right up to the time that Garrison was removed from the biography project in the summer of 1983. It is apparent, therefore, that the Defendant has both a contractual defense and a defense for wages for the alleged conversion at the very least until the termination of the agreement between Hubbard and Garrison. Additionally, since

Defendant continued to fulfill the terms of the contract with Hubbard to collect the materials at least until the termination of the Garrison contract in the summer of 1983, it is obvious that neither the Plaintiff nor the Intervenor had the right to possess the documents when they instituted their actions respectively in August of 1982 and in October of 1982. It is elementary that Plaintiff and Intervenor, when they instituted their actions, had to have the right to possess the documents at the time of the conversion. See Hartford Financial Corp. v. Burns, 96 Cal. App. 3d 591, 158 Cal. Rptr. 169, (1979). Defendant will conclusively demonstrate at trial that in addition to all of the defenses set forth above, neither Plaintiff nor Intervenor had the right to possess the documents when they instituted the present lawsuits.

(4) Defendant's "Contract" with Hubbard Is a Defense to Conversion

In those cases where the rights and liabilities of the parties for the possession of property are founded upon an underlying contract relating to the issues of possession, the Courts have generally held that there can be no conversion where the defendant has acted in accordance with his contractual agreement, or where the action is more appropriately one in contract then in conversion. For example, in the case of Peterson v. Sherman, 68 Cal. App. 2d 706, 157 P.2d 863 (1945), the Court held that for purposes of determining venue in that action that in determining whether an action was one of contract or one in tort for conversion, the

general rule is that where it is not clear which class the action belongs, it will ordinarily be construed to be in contract rather than in tort. In several cases, it has been held that defendant's compliance with the contractual agreement bars an action for conversion. See Arnold v. Producers Fruit Company, 128 Cal. 637, 61 P. 283; McCoy v. Northwestern Casualty and Surety Company, 3 Cal. App. 2d 534, 39 P.2d 864; Glascock v. Sukumlyn, 131 Cal. App. 2d 587, 281 P.2d 90; Bright v. Gineste, 133 Cal. App. 2d 725, 284 P.2d 839. In the case of Farrington v. Teichert, 50 Cal. App. 2d 468, 139 P.2d 80 (1943), a contractor removed gravel from land belonging to the plaintiff whereupon the plaintiff sued the contractor for conversion. The Court held that since the removal was with the plaintiff's consent, the action was more appropriately in contract than for conversion and the measure of damages was measured by the contractual relationship. Similarly, in the present case, Defendant Armstrong rightfully collected and possessed the materials pursuant to the contract with Hubbard. Aside from the defenses which have been set forth in this Memorandum, if any cause of action exists, it is submitted that it lies with Hubbard, not the Plaintiff or Intervenor herein, against the Defendant for breach of contract for disseminating the materials to someone other than to Garrison. Of course, since it is apparent that an agent is not under any legal duty not to disclose his principal's dishonest acts to a party prejudicially affected by them, Defendant, in light of the contents of the documents as set forth above, was not only entitled to give them to his

attorney, Michael Flynn, but was also under a moral duty to do so. See Willig v. Gold, supra, and Restatement of Agency, Second, § 418, cited at 31-32 of this Memorandum.

V

THE CREDIBILITY OF PLAINTIFF AND INTERVENOR

Assuming that the Plaintiff and Intervenor survive a motion for a directed verdict at the close of their opening statements with respect to the conversion count, and that the Plaintiff and Intervenor proceed either on the conversion count or the invasion of privacy and breach of fiduciary duty counts, Defendant submits that there will be an underlying issue of credibility throughout the trial of this lawsuit. The credibility of the Plaintiff and Intervenor relate to some very basic issues in the conversion count alone. These are as follows:

(1) Who owns or has the right to possess what documents?

(2) When did that right to possess particular documents attach?

(3) Was there a wrongful appropriation or dominion over the documents at the time of the right to possession;

(4) Assuming that the Plaintiff and/or Intervenor have a present right to possession and assuming that the Intervenor did not have the right to possess either at the time of the institution of the present lawsuit, or at the

time of the alleged conversion, can the Defendant be held liable for conversion while the documents were in the possession of the Court based upon a finding by the Court that they were placed under seal to prevent their destruction?

Defendant submits that Plaintiff obtained a preliminary injunction in this matter based upon a declaration which has already been proven to be false. In the original Verified Complaint and in the Declaration of Andrew Lenarcic, Plaintiff, Church of Scientology of California, claimed that it owned and had the right to possess the materials and documents under seal. On that basis, a preliminary injunction was issued. In October, 1982, when Intervenor entered the case, she alleged that she owned and had the right to possess the documents and not the Church of Scientology of California. Indeed, after Intervenor came into the action, the Church of Scientology of California submitted additional declarations from different parties stating that it had never received permission from Intervenor to give the documents to the Defendant and that such permission was required. Intervenor submitted a declaration and stated at her deposition that she had never given such permission. Subsequently, additional agents of the Church of Scientology of California submitted declarations and attached materials which demonstrated that Intervenor had in fact given permission for Defendant to possess the materials and that Intervenor was removed from her position presumably as a result of her felony conviction and then her successor gave permission to the Defendant to maintain possession of the

documents. Subsequently, L. Ron Hubbard submitted a letter to the Court in which he doesn't even mention Intervenor, nor does he mention Plaintiff in the action, but states that the documents should go to a separate corporation Church of Scientology International! Assuming the admissibility and validity of the letter of Hubbard, which Defendant vigorously disputes, it is clear that at the present time neither Church of Scientology of California nor the Intervenor are entitled to possess or own the documents.

It is readily apparent from the foregoing and from many other facts that the Defendant will introduce at trial that the Plaintiff and the Intervenor have changed their stories, all made under oath for the purposes of obtaining equitable relief. These false statements have been made continually from the outset of the lawsuit in order to obtain possession of documents which as shown above are in themselves indicative of years of fraud by the Plaintiff, the Intervenor and L. Ron Hubbard. Plaintiff submits that all of the foregoing statements, since they were submitted as the basis for obtaining equitable relief, and since they relate to the fundamental issues in the conversion count, raise substantial issues with regard to the credibility of the Plaintiff and the Intervenor in this action. In this connection, the Court will be confronted with perhaps one of the most fundamental issues in the lawsuit relating to the introduction of evidence. This is the admissibility of the so called "Fair Game Doctrine." That "Doctrine," as previously set forth, states that any "enemy" of the Church (of

which Defendant Armstrong per the policy of the Church is one), "may be deprived of property or injured by any means by any scientologist without any discipline of the scientologist may be tricked, sued or lied to or destroyed." Defendant submits that this policy is the fundamental policy of the Church of Scientology, the Intervenor and Hubbard, that it has been utilized throughout this action, that Defendant has been "sued" pursuant to the policy, that he has been "lied to" pursuant to the policy, that he has been "cheated" pursuant to the policy, that it is the intention of the Plaintiff and Intervenor to "destroy him" pursuant to the policy, and that the Plaintiff and Intervenor have "lied to" the Court pursuant to said policy.

Fortunately, in deciding the issues relating to the admissibility of the foregoing policy of the Plaintiff and Intervenor, the Trial Court will be aided by a specific case which has addressed the specific issue now before this Court. The case is Allard v. Church of Scientology of California, 58 Cal. App. 3d 439, 129 Cal. Rptr. 797 (1976), where this very Plaintiff sued the Plaintiff in that action for conversion and Allard sought to introduce the "Fair Game Doctrine" with respect to the credibility of the Plaintiff herein. In ruling that the "Fair Game Doctrine" was admissible, the Second District Court of Appeals discussed the issue at some length. It stated:

> "The principle issue in this trial was one of credibility. If one

> believed defendant's witnesses, then there was indeed conversion by respondent. However, the opposite result, that reached by the jury, would naturally follow if one believed the evidence introduced by respondent. Appellant repeatedly argues that the introduction of the policy statements of the church was prejudicial error. However, these policy statements went directly to the issue of credibility."

The Court then proceeded to quote from the "Fair Game Doctrine" and recited the fact that the evidence in that case supported the juries' implied conclusion that the respondent in that action was indeed "an enemy," that he had not taken property from the Church other than merely turning over documents to the Internal Revenue Service, and that the witnesses for the Church were following the policy of the Church to "lie to," "sue" and attempt to "destroy" the respondent in that action. The Court then stated as follows:

> "Evidence of such policy statements were damaging to appellant but they were entirely relevant. They were not prejudicial. A party whose reprehensible acts are the cause of

> harm to another and the reason for the lawsuit by the other cannot be heard to complain that its conduct is so bad that it should not be disclosed. The relevance of appellant's conduct far outweighs any claimed prejudice."

Of significant interest is the fact that during that trial, the Church of Scientology of California claimed that the "Fair Game Doctrine" had been cancelled in 1968 and was no longer "Church policy." In footnote 4 on page 802, the Court noted that the Trial Court in the Allard case had given the Church "almost the entire trial within which to produce evidence that the Fair Game Policy had been repealed," but that the Church had failed to do so. Defendant submits that the reason the Church did not introduce evidence of the alleged repeal is because Allard in that action would have introduced factual evidence which reflected the fact that the "Fair Game Doctrine" has never been repealed. Indeed, the quantity of evidence that exists to prove that the "Fair Game Doctrine" has not been repealed is almost overwhelming. It includes frame-ups, burglaries, robberies, blackmail, frivolous lawsuits, extortion, and a myriad of other <u>crimes including obstruction of justice for which the Intervenor in this action has been convicted</u>! Indeed, Intervenor signed a stipulation of evidence in connection with her felony conviction which proves that the

obstruction of justice for which she was convicted was done pursuant to the "Fair Game Doctrine." Further, of great significance is the fact that one of the documents presently under seal in this case, in the handwriting of L. Ron Hubbard, proves conclusively that the "Fair Game Doctrine" in fact was never cancelled but that the Plaintiff and the Intervenor merely exercised more secretive procedures with regard to its application. Defendant, at the trial of this action, will not only seek to introduce the "Fair Game Doctrine" itself, but will introduce evidence that the Plaintiff and the Intervenor falsely held out to third parties that the "Fair Game Doctrine" had been cancelled, when in fact it had not and that the conclusive evidence on this issue now rests under seal in this Court!

In light of the foregoing, Defendant submits that a ruling by the Trial Court at the outset relating to the admissibility of the "Fair Game Doctrine," and a directed verdict in favor of the Defendant with respect to the conversion count at the close of the Plaintiff's and Intervenor's opening statements, together with Defendant's proposed stipulation that any original documents in the possession of the Court may be returned to the Plaintiff and/or Intervenor as long as copies of the documents are made available to the Defendant for purposes of adjudicating his counterclaim and for purposes of providing them to other civil litigants in cases pending throughout the United States will dispose of the present action in short order. Defendant assumes that Plaintiff's and Intervenor's causes of action

for invasion of privacy, breach of fiduciary duty, and impression of a constructive trust, in light of the obvious defenses relating to "public figure, public interest, and the good faith of Armstrong to make the documents available to the public" and related defenses, all as set forth in this Memorandum, will result in Plaintiff and Intervenor dropping said causes of action. Indeed, the very fact that Plaintiff and Intervenor would even bring the present case, as is set forth in the words of the Court in Willig v. Gold, supra, is "somewhat startling"!

VI

DEFENDANT ARMSTRONG HAS A PRESENT POSSESSORY INTEREST IN THE DOCUMENTS AND MATERIALS AND EQUITY SHOULD NOT DISTURB HIS POSSESSORY RIGHTS

In an action for conversion, the Plaintiff must recover, if at all, on the strength of its own title and not on the weakness of the title of its adversary. Lee On v.

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Long, 37 Cal. 2d 499, 234 P. 2d 9 (1951). Without possession of or title to the subject of the conversion, no action for conversion will lie. Dell E. Webb Corporation v. Structural Materials Co., 123 Cal. App. 3d 593, 176 Cal. Rptr. 824 (1981).

In its complaint, Plaintiff has alleged that, "all materials contained in the Archives Project was, and is, the personal property of Plaintiff CSC;" (see Complaint, p. 3, lines 26-27), and further that "Plaintiff was, and still is, the owner, and was and still is, entitled to possession of certain personal property . . . that constitute the materials to be preserved and maintained by the Archives Project." (See Complaint, p. 4, lines 16-22). Ultimately, Plaintiff seeks return of the subject documents and materials to itself.

Although Plaintiff initially claimed to be the owner of the materials maintained by the Archives Project, it now concedes that the materials are in reality the property of Hubbard. Plaintiff must prove that it has a possessory right to the subject materials under seal.

Similarly, Intervenor must also establish why she is entitled to the possession of the subject materials. Intervenor has not seen Hubbard in several years (approximately four years), and does not believe that her correspondence reaches him. Further, a document exists in the sealed materials which can be described as a prenuptual agreement. Essentially, it indicates that Intervenor would

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not be entitled to any of Hubbard's property in the event of a dissolution.

The thrust of Plaintiff and Intervenor's contention that they should receive the subject materials through a permanent injunction rests on their claims that Hubbard entrusted the documents and materials to Defendant Armstrong only as an employee of the Church of Scientology, and that Hubbard wrote a letter to the Court, indicating that he wished the subject documents and materials returned to "the Church," and that Plaintiff and Intervenor are the agents of Hubbard. Defendant Armstrong vigorously contests that Plaintiff and Intervenor have the right to possess the subject materials because of the strong public policy and privilege compelling disclosure of wrongdoing and fraud. Even Hubbard himself should be precluded from possession for the same reason.

By their Complaint, Plaintiff and Intervenor seek by injunction to have (1) the subject documents and materials returned to Plaintiff and Intervenor; and, to have (2) Defendant Armstrong permanently enjoined from producing, reproducing, publishing, distributing or disseminating any of the materials or the information obtained from the subject documents and materials.

Equity does not grant injunctive relief as a matter of course, but considers the circumstances and equities of the case, as well as the consequences of granting the injunction. Peterson v. Santa Rosa, 119 Cal. 387, 51 P. 557. It

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is the contention of Defendant Armstrong that the circumstances, equities and consequences of granting a permanent injunction and returning the subject documents and materials to Plaintiff and Intervenor would involve the Court in the perpetration of fraud against innocent Scientologists and the public. The Court cannot, by way of injunction, aid a person or entity in committing a crime or conducting business for an illegal purpose. Asiatic Club v. Biggy, 160 Cal. 713, 117 P. 912. Two of the considerations in determining the appropriateness of the granting of an injunction is the relative hardship likely to result to the Defendant, and the interests of third persons and the public. Miller v. Johnston, 270 Cal. App. 2d 289, 75 Cal. Rptr. 699 (1969).

The hardship resulting to Defendant Armstrong, to innocent Scientologists and the public, and to other litigants involved in suits with the Church of Scientology if a permanent injunction is ordered, far outweighs any harm claimed by Plaintiff or Intervenor. This is a case where the Court must not only consider the interests of Defendant Armstrong to the subject documents and materials, but also the interests of other litigants, the public, and state and federal agencies. The lawsuits now pending in the United States against the Churches of Scientology and L. Ron Hubbard by way of complaint, cross-complaint, or counter claim all involve allegations of tortious, fraudulent and illegal conduct by Scientology and Hubbard. The thrust of those actions focus on the various frauds the Church of Scientology and Hubbard have perpetrated over many, many years regarding

the background and accomplishments of Hubbard, as well as the claimed methods allegedly developed by Hubbard and implemented by Scientology to effect "cures" of physical and emotional problems.

The subject documents and materials are highly relevant and discoverable evidence in that they establish the various frauds committed by the Hubbards and Plaintiff.

Some of the documents and materials have been the subject of requests for production in both California and Florida suits involving the Church of Scientology and the Hubbards. Until this time, no documents have been produced pursuant to those requests. Defendant Armstrong contends that if the subject documents and materials are returned to Plaintiff and Intervenor, they will never again see the light of day. In fact, a large portion of the material was only discovered during a "shredding session" involving extensive destruction of documentation. Defendant Armstrong will testify that the Organization has a history of document destruction and "vetting" of documents. Equity dictates that under these circumstances and the circumstance that the documents and materials evidence frauds, equity can not allow Plaintiff and Intervenor to obtain custody by way of a permanent injunction.

As in Willig v. Gold, supra, where the court would not allow the principal to recover damages arising out of his own frauds, Plaintiff and Intervenor should not be able to obtain possession of the subject documents and materials and

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prevent Defendant Armstrong and the public from utilizing the information contained therein.

VII

THE CLEAN HANDS DOCTRINE PROHIBITS PLAINTIFF AND INTERVENOR FROM OBTAINING INJUNCTIVE RELIEF

Plaintiff and Intervenor, co-perpetrators of a massive fraud, and co-conspirators in an attempt to conceal and destroy evidence now come before this Court and ask, as a matter of equity, that they be granted injunctive relief. The clean hands doctrine clearly prohibits this Court from granting them any equitable relief.

Equity, of course, has its origins as a court of good conscience. De Garmo v. Goldman, 19 Cal. 2d 755, 123 P. 21, 6 (1942); Johnston v. Murphy, 36 Cal. App. 469, 172 P. 616. Jealously guarding its principals, it refuses to grant relief to those whose conduct has not been conscientious. "The burden is upon the complaintant in equity to prove that, so far as the transaction involved in his demands is concerned, he is free from vice." Morrison v. Wilhoit, 62 Cal. App. 2d, 830, 145 P. 2d 707 (1944). Moreover, this Court must not only make the Plaintiff and Intervenor prove that they are free from vice, but it is this Court's duty "upon any suggestion that a plaintiff has not acted in good faith concerning the matters upon which he bases his suit, to

inquire into the facts in that regard." De Garmo v. Goldman, supra.

The Supreme Court of California has repeatedly stated:

> "Whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principal in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." De Garmo v. Goldman, supra; Lynn v. Dunkel, 42 Ca. 2d 845, 850, 299 P. 2d 236, 239 (1956).

The Court in De Garmo v. Goldman, supra, the case which contains the Supreme Court's most extensive analysis of the clean hands doctrine, continues:

> "The action of equity courts in their interposition on behalf of suitors for any and every purpose and in their administration of any

> and every species of relief, is decided and regulated by this principle . . . Therefore, as the very foundation of an equity forum is good conscience, any really unconscientious conduct connected with the controversy to which he is a party, is sufficient justification for the court to close its doors to him, nor does the fact that a plaintiff may have no adequate remedy at law justify disregarding the maxim."

As the court in De Garmo recognized, this rule is "fundamental." In fact, the clean hands doctrine has been described as "the most important rule affecting the administration of justice." Katz v. Karlsson, 84 Cal. App. 2d 469, 474, 191 P. 2d 541, 541 (1948). The rule is so important that equity will not hesitate to leave "undisturbed and in ostensible full effect acts or proceedings which would affirmatively be set aside but for such considerations." Katz v. Karlsson, supra.

In De Garmo v. Goldman, supra, the court makes it clear that even a suggestion of a lack of good faith on the part of the plaintiff is sufficient to apply the clean hands doctrine. The cases, however, make it exceptionally clear that fraud is one of the types of conduct which will lead to the imposition of the doctrine. As Judge McComb concisely

put it in Rosenfeld v. Zimmer, 116 Cal. App. 2d 719, 254 p. 2dd 137, (1953), "a court of equity will not assist a party to a fraudulent scheme to secure the objective of his plan." In fact, equity's distaste for aiding proponents of a fraud goes so far it will not only refuse relief to proponents of a an accomplished fraud, but even to those who did not actually succeed in defrauding others.

> "Equity, in administering its remedies, regards not alone the accomplished fact, but also the intent and purpose of the act . . . the unclean hands is equally applicable to cases of intent to defraud as to those in which the intent ripened into accomplishment." Belling v. Croter, 134 P. 2d 532, 536 (1943). See also, Rosenfeld v. Zimmer, supra; Samuelson v. Ingraham, 77 Cal. Rptr. 750 (1969).

Another area where the courts have been particularly vigilant in applying the clean hands doctrine is where the applicant for equitable relief has not been straightforward with the court. In Allen v. Los Angeles County District Counsel of Carpenters, 51 Cal. 2d 805, 337 P. 2d 457 (1959), the Supreme Court refused to remedy the plaintiff's unlawful dismissal from his union when the

plaintiff refused to answer questions which would have determined whether the plaintiff was eligible to remain a member of the union. The Court found the plaintiff's refusal to answer these questions, and his lack of candor to be sufficient to apply the clean hands doctrine. Similarly, in Preston v. Wyoming Pacific Oil Co., 197 Cal. App. 2d 517, 17 Cal. Rptr. 443, 452-453 (1961), the Court refused to hear the plaintiff's arguments for overturning a default entered against him when he had originally attempted to have the default overturned by presenting an argument that had no basis in fact. The Court did not accuse the plaintiff of lying or making deliberate misrepresentations to the trial court, but held that when a party stands before a court and makes representations to it as if the representations were fact, when in reality the party does not know the truth, such conduct is inequitable and will result in the Court's failing to grant the party equitable relief at some time in the future.

Applying these principles, it is very clear that Plaintiff and Intervenor are not entitled to injunctive relief. As the evidence Defendant Armstrong will present will show, Plaintiff and Intervenor have conspired to commit fraud on a massive scale. In order to sell Scientology services and writings, they have completely and knowingly misrepresented the man they claim to be the founder and have hidden evidence which demonstrates that the representations contained in Scientology writings are untrue. Victims of Plaintiff's and Intervenor's fraud not only include the

Defendant, but thousands of citizens of this State and tens of thousands of people across the United States. Plaintiff's and Intervenor's conduct is not just an example of unconscientious behavior, which ordinarily would be sufficient to close the doors of equity according to De Garmo, but misconduct of the most heinous sort.

Moreover, Plaintiff and Intervenor have not merely made representations to courts which they beleived were true but in reality had no basis in fact; they have knowingly and willingly lied and attempted to deceive courts. Their conduct has not been innocent misrepresentation, but deliberate obstruction of justice. Clearly, no court of conscience can condone such behavior or permit persons to have behaved in such a way to obtain equitable relief in order to further their plans to deceive.

This Court must also consider the extreme lengths to which Plaintiff and Intervenor have gone to cover up their fraud. Repeatedly, as Defendant Armstrong will testify, they have destroyed evidence which proves that their representations about Hubbard, particularly about his control of Scientology, were false. But this is not the only way they have attempted to conceal evidence. Their operations against Defendant Armstrong are disgraceful. First, they attempted to intimidate him through interrogation and security checks. When this was unsuccessful, they declared him to be an enemy of Scientology and held him subject ot the Fair Game Doctrine. Defendant Armstrong knew from his examination of the Hubbard documents what the Fair Game Doctrine entailed. The

mere invocation of the doctrine by Plaintiff constitutes an unconscionable act of intimidation. The operations and attacks against Defendant Armstrong and his family which are the basis of Defendant Armstrong's cross-complaint were also set into motion by Plaintiff and Intervenor.

The personal attacks against Defendant Armstrong and his family are instrumental in Defendant Armstrong's defense of this suit, as well as the prosecution of his cross-complaint, because they show the type of tactics Plaintiff and Intervenor will engage in order to get what they want. By using the Fair Game Doctrine, Plaintiff and Intervenor plainly hoped they would intimidate Defendant Armstrong into surrendering his documents and give up his attempts to publicize the truth about L. Ron Hubbard. Such efforts are clearly improper attempts to influence the outcome of this case and obstruct justice.

In the case of Hubbard v. Vosper, 1 All. E.R. 1023 (1972) (attached hereto as Exhibit "R"), the Court refused to grant equitable relief in the form of injunction to the Church of Scientology of California based upon the doctrine of unclean hands. The Court cited extensively to the Fair Game Doctrine, the practice of labeling individuals suppressive persons, and the practice of attacking individuals who are in any way critical of the Scientology Organization. The Court emphasized that the dangers of the cult should be exposed. Id. at 99-101.

The Hubbard v. Vosper case bears a striking similarity to the case at bar. In Hubbard, plaintiffs

Hubbard and the Church of Scientology sought an injunction to restrain defendant Vosper from publishing a highly critical book about Scientology which contained excerpts from Hubbard's books and writings. Plaintiffs sued defendant Vosper for infringement of copyright and breach of confidence.

Like Defendant Armstrong, defendant Vosper had been a member of the Church of Scientology for many years (14) and had been required to "sign an undertaking (a) to use the knowledge acquired on the course (Advanced and Confidential Scientology course) for Scientology purposes only, and (b) to refrain from divulging information received to those not entitled to receive it." Hubbard at 92 (material in parentheses added).

Like Defendant Armstrong, defendant Vosper became disillusioned with Scientology and left the organization.

Like Defendant Armstrong, defendant Vosper was declared a "suppressive person" and to be in a condition of "enemy," with no right to "self, possessions or position," and at the mercy of the Scientologists who "could take any action against him with impunity." Id. at 92.

The Court denied plaintiffs' injunction and stated that defendant Vosper had a defense of public interest in exposing the dangers of Scientology (see opinion of Lord Denning, p. 96).

The Court ended by stating that Hubbard and the Church of Scientology had been "protecting their secrets by deplorable means" and that they came before the Court with

unclean hands in asking the Court to protect their secrets through the equitable remedy of injunction.

In the present case, Defendant Armstrong has had two suppressive person declares made against him, and he is presently "fair game" to the organization. This same type of activity was found to be deplorable by the Court in Hubbard v. Vosper, so deplorable that the Court found plaintiffs to have unclean hands and not entitled to a preliminary injunction.

Plaintiff and Intervenor thus come before this Court seeking to keep frauds and illegalities secret by way of injunction. Such activity should not be sanctioned by the Court in that "he who comes into equity must do so with clean hands." 30 Cal. Jur. 3d, Equity, § 25.

VIII

THOSE CASES WHICH LIMIT THE APPLICATION OF THE CLEAN HANDS DOCTRINE DO NOT LIMIT THE USE OF THE DOCTRINE IN THE CASE AT BAR

California law makes it quite clear that the clean hands doctrine cannot be used simply to judge the morals of the parties before an equity court. The doctrine clearly cannot be used to punish every prior act of misconduct that the Plaintiff has ever committed. As the Supreme Court made

clear in Allen v. Los Angeles County District Counsel of Carpenters, supra:

> "Misconduct claimed to result in lack of clean hands will not bar relief unless it is closely connected with the matter in which the plaintiff seeks equitable assistance and is of such prejudicial nature to the rights of another that it would be inequitable to grant him that assistance."

Thus, as several Appeals Court cases have noted, misconduct in the past does not mean that a plaintiff will be barred from obtaining equitable relief in the transaction presently before the Court. See Tinney v. Tinney, 27 Cal. Rptr. 239, 243 (1963); Carmen v. Athearn, 77 Cal. App. 2d 585, 598, 175 P. 2d 926, 934 (1947); Sheppard v. Wilcox, 210 Cal. App. 2d 53, 61-62, 26 Cal. Rptr. 412, 418 (1963).

It is clear here, however, that the transaction before the Court, and the misconduct committed by the parties seeking equitable relief, are very closely connected. Plaintiff and Intervenor have engaged in a pervasive campaign to misrepresent L. Ron Hubbard to thousands of California citizens and other Americans. The documents they ask the Court to order to be returned to them prove that this campaign was fraudulent and deceitful. Once Plaintiff and

Intervenor have intentionally made misrepresentations to the public, they can not have cause to complain, when evidence that their misrepresentations were willful comes to life. Certainly, they have no basis to ask the courts of this state for equitable relief in order to repress evidence of their wrongdoing.

In this regard, this case is similar to Katz v. Karlsson, 84 Cal. App. 2d 469, 474, 475; 191 P. 2d 541 (1948). In that case, a husband attempted to have annulled a divorce which it became apparent he obtained with the collusive and fraudulent efforts of himself and his wife. The court applied the clean hands doctrine and refused to allow the husband to escape from the consequences of the fraud he had propounded.

Had Plaintiff and Intervenor told the truth about L. Ron Hubbard's background, his involvement in the Church of Scientology, and his control of Scientology, the documents which are the core of this case, would have no significance and there would be no controversy before this Court today. The case before this Court only arises because of Plaintiff's and Intervenor's desperate attempts to continue to conceal the truth about Hubbard and to hide their fraud. This would be the effect of this Court's granting the equitable relief requested. Clearly, then, the transaction before the Court is very closely connectd with Plaintiff's and Intervenor's misconduct.

But the Plaintiff's and Intervenor's misconduct does not end with their fraudulent misrepresentations. Their

attempts to intimidate Defendant Armstrong with the use of the Fair Game Doctrine, abusive security checks, and personal attacks and harassment against himself and his family also constitute misconduct requiring this Court to apply the clean hands doctrine. Clearly, this type of misconduct is also very closely connected to the transaction before the Court. These actions were taken in order to influence Defendant Armstrong to surrender the documents and resign from his attempts to expose the frauds perpetrated by Plaintiff and Intervenor. Any unlawful out-of-court action taken by parties seeking equitable relief against the parties they seek relief from, must constitute misconduct intimately intertwined with the proceeding before the Court.

Other cases have noted, most notably Bradley Co. v. Bradley, 165 Cal. 237, 131 P. 750 (1913), that not every wrongful act, and not even every fraud, will prevent a suit or inequity from obtaining relief. See also, Moriarty v. Carlson, 7 Cal. Rptr. 282, 285 (1960); Sheppard v. Wilcox, 210 Cal. App. 2d 53, 61-62, Cal. Rptr. 412, 418 (1963); Boerick v. Weiss, 68 Cal. App. 2d 407, 156 P. 2d 781. In cases, however, which follow this line, the purported fraud or wrong is very minimal indeed. In Bradley Co. v. Bradley, supra, the progenitor of this line of cases, for example, the court admits that the supposed "fraud" was not intended to hurt anyone and did not hurt anyone. The plaintiff's failure to note his interest in a quiet title action was simply done to conceal the fact, for reputational purposes, that he had borrowed money. There was no attempt to defraud creditors,

or even hide the amount that they owed to others. Similarly, in most of the other case cited above, the purported wrong did not in fact prejudice anyone, or any harm caused at the time that the wrong was originally committed has been remedied.

Such, of course, is not the situation in this case. Plaintiff's and Intervenor's misrepresentations have not been innocent, nor have they made any effort to recompense those that they have defrauded. Moreover, compared to the small wrongs committed by plaintiffs where the court did not apply the clean hands doctrine, Plaintiff's and Intervenor's extensive and pervasive conspiracy to conceal evidence and defraud the public is massive in scope.

Plaintiff and Intervenor may attempt to rely on dicta in certain cases which holds that the misconduct of the persons seeking equitable relief must have prejudiced the defendant in the current suit before the court will invoke the clean hands doctrine. See, for example, Soon v. Beckman, 44 Cal. Rptr. 190, 192. The case law demonstrates that such dicta is clearly inaccurate. One of the most common situations in which the clean hands doctrine is invoked is where a plaintiff has transferred assets to a second person without consideration and without any record of his remaining interest in the assets in order to avoid the claims of his creditors, and then seek to have the assets retransferred to him at some point in the future. In this situation, courts have repeatedly refused to invoke the equitable doctrine of resulting trust because the plaintiff's hands were unclean.

See, e.g., Shenson v. Fresno Meat Packing Co., 96 Cal. App. 2d 725, 216 P. 2d 56 (1950); Samuelson v. Ingraham, 77 Cal. Rptr. 750 (1969); Russell v. Soldinger, 59 Cal. App. 3d 633, 131 Cal. Rptr. 135 (1976). In all of these cases, the clean hands doctrine was applied, even though the defendant was not only not prejudiced by the plaintiff's prior misconduct, it was the beneficiary of the prior misconduct.

The authorities cited above and the cases cited therein plainly hold that equitable relief will not be granted in order to assist parties to a fraudulent scheme to extricate themselves from a situation into which their fraud has led them. By analogy, these cases also make it clear that if Defendant Armstrong, Intervenor, and Plaintiff were all co-conspirators to conceal evidence of fraud, and in pursuance of that conspiracy, they agreed that Defendant Armstrong should given the documents, this Court would not grant equitable relief to Plaintiff and Intervenor if Defendant Armstrong wrongfully refused to return the documents to those co-conspirators at a later date. It seems incredible, therefore, that Plaintiff and Intervenor now have a better claim for the return of the documents, when they were nonetheless conspiring to conceal evidence, over Defendant Armstrong, who was unaware of the conspiracy, had a reasonable claim of right to the documents, and in fact, plans to use the documents to expose Plaintiff's and Intervenor's frauds against the public and the courts.

An examination of the use of the clean hands doctrine in the analogous area of trademark infringement also

demonstrates that there is no necessity that the person raising the claim of unclean hands need be prejudiced by the misconduct of the party seeking equitable relief. In those cases, courts have frequently refused to protect a registered trademark from infringement because of the trademark owner's deceptive trade practices. When trademarks have been used to mislead the public, when their owners have engaged in false advertising, or violated the anti-trust laws and even when the tendency of a particular product or trademark holder has been demonstrated to be harmful to the public, courts have consistently refused to grant the injunctive relief sought by the trademark owner. See note, The Besmirched Plaintiff and the Confused Public: Unclean Hands and Trademark Infringement, 65 Column 9. Rev. 109, 110-116, and cases cited therein. In all of these cases, the courts invoked the clean hands doctrine on the basis of harm caused to the public by the plaintiff's fraudulent conduct. The same rule applies here.

The authorities noted above are particularly important in this case, because Plaintiff and Intervenor appear to be relying, in part, on the analogous protections granted by common law copyright. But as the cases above make clear, just because the law grants a party an exclusive right to use certain material does not mean that the copyright holder, (or trademark holder) need not abide by the normal rules of equity. Despite the grant of exclusivity the law provides, the copyright holder must not use his right of exclusive use to defraud or harm the public.

In any event, Defendant Armstrong has been prejudiced by the Plaintiff's and Intervenor's misconduct. First, Defendant Armstrong was a victim of the frauds perpetrated by Plaintiff and Intervenor. Defendant Armstrong was a loyal Scientologist for twelve years, and during all of this time he believed and relied upon the misrepresentations promulgated. Based on his belief that Hubbard was as he was actually represented, he suffered indignities at Hubbard's own hands and from Intervenor and Plaintiff, which he very well might not have tolerated, had he known that Hubbard was a charletan and a fraud. These included a two-week imprisonment on Hubbard's orders in Los Angeles and two terms at Scientology's RPF, the equivalent of Scientoloogy prisons or work camps.

Second, as previously noted, but for misrepresentations and frauds of the Intervenor and the Plaintiff, there would be no suit before this Court. Only because Plaintiff and Intervenor tried to defraud the public about the background of L. Ron Hubbard and because Plaintiff, even after being informed by Defendant Armstrong of the contents of these documents, had no intention of correcting the public's perceptions of Hubbard, did Defendant Armstrong feel compelled to take these documents in order to insure their safety and to insure the truth emerged. In fact, as the evidence will show, Plaintiff sought to punish and harass Defendant Armstrong because he wanted to let the public know the truth. Defendant Armstrong, therefore, has been severely

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prejudiced and harmed due to Plaintiff's and Intervenor's misconduct.

It is also plain that Defendant Armstrong was directly prejudiced by the actions and programs taken against him pursuant to the Fair Game Doctrine. As Defendant has previously argued, these actions were improper attempts to intimidate Defendant Armstrong into surrendering his legal rights, and therefore, were unlawful attempts to unfairly influence the outcome of this trial. Defendant has already argued that such harm is cognizable under the clean hands doctrine, and there can be no doubt that Defendant Armstrong was severely prejudiced by such actions.

The lies about L. Ron Hubbard's background and his control of Scientology and the attemps to conceal the truth about these lies, are the core of this litigation. The documents which are being fought over are the proof that Plaintiff and Intervenor have deliberately and willfully lied to the public and to the courts. Any court action that concerns one of these topics is intimately connected with the other, and to allow Intervenor or Plaintiff to prevail on the documents issue means that they will be able to perpetuate the other frauds they have perperated.

In Rosenfield v. Zimmer, 254 P. 2d 137 (1953), Judge McComb concisely stated the rule of law which must apply here. "A court of equity will not assist a party to a fraudulent scheme to secure the objective of his plan." Not to apply the clean hands doctrine would mean that this Court would acquiesce in the frauds committed by Plaintiff and

Intervenor and that it would abet their conspiracy to destory and conceal evidence and to continue to obstruct justice. This Court, acting as a court of equity, clearly can not allow such a result. No matter what the merits are of the Plaintiff's or the Intervenor's suit, this Court must preclude them from obtaining equitable relief.

IX

PLAINTIFF AND INTERVENOR, AS AGENTS OF A FUGITIVE FROM JUSTICE, ARE FORECLOSED FROM PRESENTING THEIR CLAIMS TO THIS COURT.

Not only does the clean hands doctrine prevent Plaintiff and Intervenor from obtaining injunctive relief, but the common law on the right of fugitives forecloses L. Ron Hubbard or his agents and representatives from presenting any claim to this Court. Hubbard plainly is a fugitive. He was convicted in absentia by the courts of France and has been avoiding their jurisdiction since the mid-1970's. And in the case of McLean v. Church of Scientology of California, No. 81-174-Civ-T-K, Middle District of Florida, a Federal District Judge has found that L. Ron Hubbard is intentionally concealing himself from justice.

Hubbard's fugitive status "disentitles" from him his calling upon the Court for a determination of his claim. See Molinaro v. New Jersey, 396 U.S. 365, 366 (1970); Eisler

v. United States, 338 U.S. 189 (Frankfurther, J. concurring); Smith v. United States, 94 U.S. (1876). This doctrine not only precludes a fugitive from having his criminal appeal heard, it presents his civil actions from being heard, too. Doyle v. United States Department of Justice, 494 F. Supp. 842 (D.C. D.C. 1980) (per J. Harold Green) aff'd., 666 F. 2d 1365 (D.C.. Cir. 1982) cert. denied, 102 S. Ct. 1636; Broadway v. City of Montgomery, 530 F. 2d 657 (5th Cir. 1976). It does not matter whether the petitioner's fugitive status arose within the jurisdicition of the Court, or within another jurisdiction. See Dockins v. Mitchell, 437 F. 2d 646 (D.C. Cir. 1970); Doyle v. United States Department of Justice, 494 F. Supp. at 844.

California has adopted the Federal Courts' rulings on this subject. See People v. Buffalo, 49 Cal. App. 3d 838, 123 Cal. Rptr. (1975). Moreover, California courts have also held that not only may the fugitive not present his claims in California courts, but no one whose rights descend from the fugitive may obtain relief, either. In Bonelli v. State, 139 Cal. Rptr. 486, 493 (1977), Bonelli was a fugitive who had been indicted for bribery in 1954 and who fled to Mexico. He lived there until his death, when his wife, who was still a resident of California, then filed a claim for her share of his pension. The Court made it clear that under almost all circumstances, a fugitive who deliberately conceals himself from the jurisdiction of the courts would not be able to bring a suit for benefits he was entitled to, nor could

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anyone who was claiming under him.[4] The Court, however, allowed an exception for Bonelli's wife, because of extreme dilatoriness of the State of California in pursuing its rights against Bonelli.

In this case, Plaintiff and Intervenor trace their rights through L. Ron Hubbard. As such, Bonelli makes it clear that Hubbard's status as a fugitive precludes them from asking for injunctive relief. And unlike Bonelli, there is no dilatory action by either Defendant or anyone else which would allow an exception to the usual fugitive rule.

Since California recognizes that fugitives who have intentionally hidden themselves from the jurisdiction of California courts do not have the rights to press their civil claims within the state court system, and since Intervenor and Plaintiff are presenting the claims of a fugitive, this Court should not hear their complaint.

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[4]Interestingly enough, the court cited the clean hands doctrine as the basis for its decision. It should be noted that Bonelli's taking of bribes had nothing to do with his pension rights.

X

THE PRIVACY INTERESTS ASSERTED BY PLAINTIFF AND INTERVENOR IN THE SUBJECT DOCUMENTS AND MATERIALS IS OUTWEIGHED BY THE PUBLIC INTEREST IN DISCLOSURE OF INFORMATION PREJUDICIAL TO IT.

The privacy vs. public interest issues are fully briefed in Defendant's Opposition to Motion in Limine regarding admission of, and testimony relating to, documents sealed by this Court. Defendant Armstrong thus refers the Court to that document in order to avoid duplication.

XI

CONCLUSION

Based upon the foregoing and all of the pretrial motions/oppositions filed by Defendant Armstrong, it is respectfully requested that a permanent injunction not issue

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in favor of Plaintiff or Intervenor and that Plaintiff and Intervenor take nothing by their Complaints.

DATED: April ___, 1984

CONTOS & BUNCH

By: _____
JULIA DRAGOJEVIC
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GERALD ARMSTRONG

JD4:5(fn)